



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 20 and 54**

**[WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; FCC 11-189]**

Connect America Fund; Developing an Unified Intercarrier Compensation Regime; Lifeline and Link Up

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission amends rules regarding the attributes of “voice telephony service” to be supported by the Federal universal service support mechanisms. This action is necessary to reflect the evolution of the marketplace and to limit supported services. The Commission also waives certain effective dates so that intercarrier compensation for non-access traffic exchanged between Local Exchange Carriers (LEC) and Commercial Mobile Radio Service (CMRS) providers pursuant to an interconnection agreement in effect as of December 23, 2011, will be subject to a default bill-and-keep methodology on July 1, 2012, rather than on December 29, 2011. This action is necessary to limit marketplace disruption by delaying bill-and-keep until carriers are eligible to receive recovery as part of the transitional revenue recovery mechanism for this type of traffic.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Amy Bender, Wireline Competition Bureau, (202) 418-1469, or Victoria Goldberg, Wireline Competition Bureau, (202) 418-7353, or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Order on Reconsideration (Order) in WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, FCC 11-189, released on December 23, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

1. In this Order, the Commission modifies on its own motion two aspects of the USF/ICC

Transformation Order, 76 FR 73830, November 18, 2011.

2. In the USF/ICC Transformation Order, the Commission eliminated its former list of nine supported services and amended § 54.101 of the Commission's rules to specify that "voice telephony service" is supported by federal universal service support mechanisms. The Commission found this to be a more technologically neutral approach that focuses on the functionality offered instead of the technologies used, while allowing services to be provided over any platform. This approach also recognizes that many of the services enumerated in the previous rule are universal today and that the importance of operator services and directory assistance, in particular, has declined with changes in the marketplace. A number of parties have raised questions about how the amended rule should be understood to affect Lifeline-only ETCs and their compliance with section 214(e)(1)(A) of the Act, which requires a carrier to provide supported services using its own facilities, in whole or in part, in order to be eligible to receive support. Several parties have urged the Commission to take action to ensure that there is no disruption to the services currently being provided to millions of eligible Lifeline consumers by ETCs that have already been designated based on their provision of supported services as previously defined by the Commission.

3. The Commission notes that, in adopting the new definition of "voice telephony" in § 54.101, it eliminated certain services and functionalities from the list of supported services, consistent with its findings regarding the evolution of the marketplace. To more clearly reflect its intent to specify the attributes of "voice telephony" in the new definition, the Commission amends § 54.101 to read: "Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part)."

4. Additionally, the Commission affirms that only carriers that provide “voice telephony” as defined under §54.101(a) as amended using their own facilities will be deemed to meet the requirements of section 214(e)(1). Thus, a Lifeline-only ETC does not meet the “own facilities” requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice telephony service” under 47 CFR 54.101, such as access to operator service or directory assistance. Therefore, to be in compliance with the Commission’s rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the USF/ICC Transformation Order, as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported “voice telephony service,” or obtain forbearance from the “own facilities” requirement from the Commission. As discussed more fully below, the effective date of this minor modification to the language in amended § 54.101 is the date of Federal Register publication of the Order. To avoid disruption to consumers of previously designated ETCs, however, the Commission set July 1, 2012 as the effective date of 47 CFR 54.101 for Lifeline-only ETCs in the service areas for which they were designated prior to December 29, 2011. The Commission anticipates that it may address the “own facilities” requirement for Lifeline providers in the near future in a subsequent order addressing the Commission’s Lifeline program. In the event that this Order is not published in the Federal Register before December 29, the Commission will consider the amended rule as adopted in the USF/ICC Transformation Order suspended with respect to this limited class of ETCs, so that the Commission’s actions in the USF/ICC Transformation Order do not impact existing state designations.

5. In the USF/ICC Transformation Order, the Commission adopted bill-and-keep as the default intercarrier compensation methodology for non-access traffic exchanged between local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers. Rather than implementing a more gradual transition, the USF/ICC Transformation Order made the default bill-and-keep methodology applicable as of the effective date of the rules (December 29, 2011). This timing reflected the

Commission's balancing of the benefits of providing clarity and addressing arbitrage and, in particular, traffic pumping, against the apparently small risk of marketplace disruption from doing so. There was little, if any, evidence in the record that there would be significant harmful effects on any LECs as a result of this timing. One factor supporting the Commission's conclusion with regard to incumbent LECs was the understanding that such carriers would be eligible to receive recovery as part of the transitional recovery mechanism for reductions in net reciprocal compensation payments. Another factor was adoption of an interim rule that limited the responsibility for transport costs applicable to non-access traffic exchanged between CMRS providers and rural, rate-of-return incumbent LECs.

6. In the Order the Commission reconsiders the balancing of benefits and burdens in this context. The Commission finds it more appropriate to make the default bill-and-keep compensation methodology for LEC-CMRS non-access traffic consistent with the start of the transitional intercarrier compensation recovery mechanism for carriers that were exchanging LEC-CMRS traffic under existing interconnection agreements prior to the adoption date of the USF/ICC Transformation Order. Under the recovery rules as adopted in the USF/ICC Transformation Order, the transitional recovery mechanism does not begin until July 1, 2012, and it is unclear whether incumbent LECs will be eligible to receive recovery for reductions in revenues from December 29, 2011 through July 1, 2012. The Commission had anticipated carriers would continue to receive payment at the rates in place under existing interconnection agreements while they were being renegotiated. However, the Commission believes that this assumption is over-inclusive and not entirely accurate since interconnection agreements are negotiated between two parties and contain different terms and conditions for implementing change of law provisions – indeed, some may relate back to the effective date of the new rule, rather than when the renegotiated agreement is in place. Moreover, the Commission believed that, as a general matter, LEC-CMRS agreements contained rates at \$0.0007 or less as their reciprocal compensation rate. Parties indicate, however, that many existing LEC-CMRS agreements reflect reciprocal compensation rates “much higher than \$0.0007.” Thus, the supplemental record suggests that the Commission did not accurately assess the impact of its decision to immediately move to bill-and-keep for all LECs for this category of traffic.

7. Enabling carriers that have effective interconnection agreements governing the exchange of LEC-CMRS non-access traffic as of the adoption date of the USF/ICC Transformation Order to continue to exchange traffic and receive compensation pursuant to those existing agreements until July 1, 2012 will minimize market disruption, while enabling carriers to begin the process of revising such agreements immediately. In contrast, carriers exchanging LEC-CMRS non-access traffic without an interconnection agreement do not receive such compensation today, so the Commission finds no likelihood of marketplace disruption that would support reconsideration of its decision in that context. Accordingly, intercarrier compensation for non-access traffic exchanged between LECs and CMRS providers pursuant to an interconnection agreement in effect as of the adoption date of this Order, will be subject to a default bill-and-keep methodology on July 1, 2012 rather than on December 29, 2011. In the event that the Order is not published in the Federal Register before December 29, 2011, the Commission also finds good cause to waive these requirements to the extent necessary to preserve the status quo until such time that the Order goes into effect. The Commission may waive its rules for good cause shown. The Commission finds that waiver, if needed to preserve the status quo for a limited period consistent with the Order, will serve the public interest by protecting against the potential marketplace disruption, described above, that the Commission sought to avoid through the intercarrier compensation rule changes adopted in this Order. The Commission expects that, unless parties mutually agree otherwise, traffic will continue to be exchanged pursuant to existing interconnection agreements between the adoption date of the Order and June 30, 2012. The Commission cautions that parties should not use the Order as an opportunity to abuse the distinction between traffic subject to an interconnection agreement as of the adoption date of the USF/ICC Transformation Order and traffic not subject to an interconnection agreement in order to engage in arbitrage to avoid payment of intercarrier compensation charges. Indeed, the Commission will be monitoring the situation and will not hesitate to take action if it appears any such arbitrage is occurring.

8. The Commission strongly urges all parties with such agreements to immediately begin preparations for the July 1 effective date of the transitional recovery mechanism, including by

commencing discussions regarding change-of-law provisions, if applicable. LECs should not view the Order as an excuse for delaying negotiations or deferring preparations. To ensure that the change the Commission adopts does not create incentives to engage in such delay, and consistent with the balance of interests discussed above, the Commission provides that, unless parties mutually agree otherwise, starting on July 1, 2012, compensation for traffic exchanged during the re-negotiation of interconnection agreements with change-of-law provisions will be subject to true-up at the level of reciprocal compensation for non-access LEC-CMRS traffic established in the resulting interconnection agreement, whether the default of bill-and-keep or other pricing negotiated by the carriers. The Commission finds that this limited departure from the Commission's prior determination not to override compensation arrangements in existing contracts is justified to ensure that the onset of bill-and-keep is not unilaterally delayed beyond the intended transition period due to delayed or extended re-negotiations under contractual change-of-law provisions. When the Commission set an immediate effective date for a default bill-and-keep methodology for this traffic in the USF/ICC Transformation Order, it found that re-negotiation under such provisions would help provide a reasonable transition for LECs with such agreements. Now, the change in the effective date for bill-and-keep provides a transition for non-access LEC-CMRS traffic to mitigate marketplace disruption for carriers for which these revenues may be significant today. Given that change, the Commission finds that this measure is necessary to maintain the balance of benefits to consumers and carriers from a default bill-and-keep methodology that the Commission intended in the USF/ICC Transformation Order. Further, because of the limited nature of this modification, the Commission finds that it will not have the harmful effects that concerned the Commission in adopting its general policy on existing agreements. The Commission also finds that adoption of this limited measure will have minimal adverse impact on carriers.

9. Regulatory Flexibility Certification. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The Commission certifies that the rule revisions will not have a significant economic

impact on a substantial number of small entities, because the action merely maintains the status quo for the entities affected. The Commission will send a copy of the Order, including such certification, to the Chief Counsel for Advocacy of the Small Business Administration.

10. Paperwork Reduction Act Analysis. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C 3506(c)(4).

11. Congressional Review Act. The Commission will send a copy of the Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (“CRA”).

12. Effective Date. The Commission concludes that good cause exists to make the effective date of the amendments to rule 47 CFR 54.101 effective immediately upon publication in the Federal Register, pursuant to § 553(d)(3) of the Administrative Procedure Act. Agencies determining whether there is good cause to make a rule revision take effect less than 30 days after Federal Register publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded a reasonable time to prepare for the effective date of a new rule. In this instance, no ETC will be prejudiced by the Order being effective immediately upon publication in the Federal Register because this action merely clarifies the intent of the USF/ICC Transformation Order and, by delaying the implementation date of the modified rule, restores the status quo for Lifeline-only ETCs in those states where they have already been designated that existed prior to the USF/ICC Transformation Order for a defined period of time. This will allow the Commission the opportunity to take further action with respect to the “own facilities” requirement for such providers in the context of the low-income program.

13. The Commission also concludes that good cause exists to make the revisions to §§ 20.11(e), 51.705(a), and 51.709(c) effective immediately upon publication in the Federal Register. As

discussed above, allowing the rules subject to the Order to go into effect on December 29, 2011 may potentially result in a significant financial impact on LECs exchanging non-access LEC-CMRS traffic pursuant to interconnection agreements, contrary to the Commission's initial assumptions. Thus, the Commission finds good cause to make these rule revisions take effect upon publication in the Federal Register. Again, no parties will be prejudiced by this Order being effective immediately upon publication in the Federal Register because this action merely permits LECs and CMRS providers exchanging non-access traffic pursuant to an interconnection agreement to maintain the status quo for a defined period of time.

## List of Subjects

47 CFR Part 20

Communications common carriers, Commercial mobile radio services, Interconnection, Intercarrier compensation.

## 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

## FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.



For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 20 and 54 as follows:

## **PART 20 -- COMMERCIAL MOBILE RADIO SERVICES**

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted.

Section 20.12 is also issued under 47 U.S.C. 1302.

2. Section 20.11 is amended by revising paragraph (e) to read as follows:

### **§20.11 Interconnection to facilities of local exchange carriers.**

\* \* \* \* \*

(e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission.

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## **PART 54—UNIVERSAL SERVICE**

3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

### **Subpart B—Services Designated for Support**

4. Section 54.101 is amended by revising paragraph (a) to read as follows:

#### **§ 54.101 Supported services for rural, insular and high cost areas.**

(a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the

public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

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[FR Doc. 2012-349 Filed 01/10/2012 at 8:45 am; Publication Date: 01/11/2012]